IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9153 OF 2005

Force Motors Employees Coop.
Credit Society .. Petitioner

Versus

Force Motors Ltd. .. Respondents

Mr.P.S.Dani for petitioner
Mr.S.K.Talsania, Senior Advocate with Sanjay Udeshi i/b. Sanjay Udeshi & Co. for respondents.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 28th November 2007

P.C.

. The preliminary issue of jurisdiction

being answered against the petitioner disputant by the impugned order, the conclusion in that behalf is questioned in this petition under Article 227 of the Constitution of India.

2. With the assistance of Mr.Dani appearing for petitioner and Mr.Talsania, learned Senior Counsel appearing for respondents, I have perused the dispute, copy of application raising the preliminary issue of jurisdiction and the order of the Cooperative Court dated 17th October 2005 holding that it has jurisdiction to entertain and try the dispute, so also that of the Maharashtra State Cooperate Appellate Court dated 19th November 2005, reversing that view of the Coop.Court.

3. It is undisputed that the petitioner is a coop.society of employees who are employed by the respondents. It is also not disputed that these employees have formed a society and the said

society has been authorised by them to deduct some amount from their salary or wages so that they can be remitted to the society. The deduction from salary to meet society's claim is an aspect covered by section 49 of the Maharashtra State Coop.Societies Act. Sub-section (1) of the same contemplates an Agreement between the members of society and the society. Such an agreement by virtue of sub-section (2) is held to be binding upon the employer who will make the necessary deductions from the salary or wages and remit the sums to the coop.society of the employees.

4. The grievance in the dispute is that such deductions were made by the first respondent from time to time. However, a communication was addressed to the society by the first respondent informing it that first respondent will charge Rs.100/- per month towards administrative expenses for each deduction with effect from 1st

June 2005. The society questioned this action of the employer and invited its attention to sub-section (2) of section 49 of the Act and urged that no such deductions can be made contrary to the agreement and the employer is bound by the terms and conditions of the same. Thus, it questioned the decision of the employer to make deductions as contended by the employer.

5. That led to the filing of the dispute before the Coop.Court and para 14 of the dispute application reads thus:-

> "14. The Disputant Society is the Cooperative Society registered under MCS Act, 1960. It is submitted that the disputant society has got legal right, to get enforced the provisions of Section 49 of the Act against the Opponent Companies i.e. in terms of getting recovered its dues from the salary payable to its

members without any cost of whatsoever and the opponent companies are under leal obligation to do the same. However, the opponent companies has started acting contrary to mandatory provisions of Section 49 of the Act. Thus, the opponent companies are denying legal right of the Disputant society arising out of provisions of MCS Act, 1960. Thus, subject matter of the dispute touches to the business of the disputant arising out of violation of Section 49 of the Act by the opponent companies. In other words, present dispute is for the enforcement of provisions u/s. 49 of the M.C.S. Act against the opponent companies for not charging administrative expenses on such deductions. It is evident that the opponent companies are obviously violating provisions of MCS Act despite realising their obligations.

Thus present dispute is exclusively arising out of breaches of provisions of Section 49 of MCS Act 1960. On other hands the opponents companies are making demand of so called administrative charges on monthly deductions for each transaction for each member and as such the opponent companies are making claim through the members of the disputant society. For all these reasons, the Hon'ble Court has got jurisdiction to entertain and try present dispute. It is categorically submitted that the Disputant Society is seeking relief under MCS Act, which is purely restricted to the enforcement of provisions of Section 49 of the Act in the proper manner and according to settled practice by the opponent companies. Hence, the present dispute squarely falls within the purview of Section 91 of MCS Act, 1960 and

therefore, this Hon'ble Court has jurisdiction to entertain and try the present dispute."

6. Based upon the above averments, the petitioners claim declaration that the act of the first respondent in levying administrative charges of Rs.100/- per member per month for every transaction is illegal, null and void and all such sums are not liable to be deducted which must be remitted back to the society.

7. Upon being served with the papers and proceedings, the first respondent filed an application on 24th August 2005 contending that on a plain reading of the dispute the same does not answer the requirements of section 91(1) of the MCS Act and more particularly sub-clause (c) thereof. Such being the case, the issue of jurisdiction be decided as a preliminary issue and answered accordingly.

8. Application was served upon the petitioner disputant and it filed reply thereto.

9. Learned Judge of the Coop.Court after hearing both sides held that the Coop.Court has jurisdiction, inasmuch as, in his view, the provisions of section 91 do not restrict filing of a dispute against employer by persons who are members of the subject society and have executed agreement under section 49 of the Act. It was his view that first respondents are claiming through their employees, who are members of the petitioners disputants. In such circumstances, the trial court held that it is not necessary that the company must have any claim against the society. Therefore, dispute is maintainable.

10. The matter was carried in appeal by the first respondent and the appellate court held as under:-

". .... Hence dispute is maintainable. This contention cannot be accepted as independent right is created by executing agreement and authority under section 49 of M.C.S. Act in favour of society and employer of member who had executed agreement and authority as contemplated by Section 49. If employer fails to perform duty cast as per authority then remedy is to ask for the amount of loan instalment with interest before Registrar. If employer fails to comply with requisition as contemplated by Section 49, remedy is not to file dispute under section 91 of M.C.S.Act. According to respondent i.e. disputant in trial court, as appellants are demanding illegally Rs.100/- per member as administrative charges for deducting amounts from salary of the members of

respondent society without any right. Remedy against said illegal act will not lie u.s. 91 as present applicants appellants are not parties as contemplated by sec.91. Appellants are not supposed to be making this illegal demand out of some interest through members of respondent society. Hence, appellants are not persons claiming through members. As discussed above as parties are not as contemplated by Sec.91 of M.C.S. Act to dispute before Trial Court is not maintainable u.s. 91. My findings to this point for determination is No."

11. It is this conclusion of the lower appellate court which is challenged before me.

12. Mr.Dani learned Counsel for petitioner would urge that the dispute application if read

as a whole clearly makes out a case of the petitioner society and its members claiming through the employers. In other words, in his submission the employees of the first respondent are the members of the petitioner society. It is not necessary that there should be a contractual relationship between the petitioner and first respondent. In the present case that is unnecessary because Section 49(2) mandates that employer must act in accordance with agreement executed by the employee members of the petitioner. That such an agreement is executed is not in dispute. In such view of the matter the trial court was right in concluding that the dispute is maintainable.

13. Mr.Talsania, learned Senior Counsel on the other hand supported the reasoning of the lower appellate court.

14. In my view, the lower appellate court was

right in the conclusion it has reached. In the case of Belganga Sahakari Sakhar Karkhana Vs. Keshav Rajaram Patil, reported in 1994 (2) Mh.L.J. 1756, this Court has following to observe with regard to a Dispute under section 91 and the remedy provided by the Statute:-

> "11. .... Thus, according to the common law of the nation as it is incorporated in the Code of Civil Procedure, the Civil Courts constituted under the Code of Civil Procedure, explicitly or imlpliedly barred. It is also held that wherever it is barred impliedly, such a result must come out of necessary implication from the terminology used in the provision which purports to bar the jurisdiction of the Civil Court. Ouster of the jurisdiction of the civil courts on civil causes of action is therefore to be looked upon

jealously by the Courts and the provisions which purport to bar the jurisdiction of the Civil Courts are required to be construed very strictly. The point which fell for decision in this matter will have, therefore, to be considered bearing in mind the aforesaid position of law."

"16. With the advantage of the aforesaid rulings at hand, one has, therefore, to conclude that the position of law as it boils down at present, is that the expression "any dispute" used in section 91(1) of the Act would mean a dispute arising out of the provisions of the Act. Consequently, therefore, when the dispute has arisen between the society and a member about the matter which does not arise out of the provisions contained in the Act, that

would not fall within the jurisdiction of the Coop.Courts."

"19. Now, in the facts of the present case, the right of a member to contract with the society for the construction of a godown building, is not a right created by the Act. That right is subject to the jurisdiction of Civil Courts under common law. If that right is sought to be excluded, there should be an explicit provision in the statute which purports to accrue such a jurisdiction. In the present case, section 91 does not exclude explicitly from the connotation of the term "dispute" the civil rights arising in favour of a member otherwise than under the Act. Therefore, the expression "any dispute", though used in the section could not be ascribed a meaning so as to include therein the disputes regarding

the rights arising under the common law. The object of the Maharashtra Cooperative Societies Act is not to create in itself a complete Code for regulating all the relations between the Cooperative societies and the members but the object is to regulate such relations only in respect of the matters which are regulated by the Act. The preamble of the Act reads thus:-

> "WHEREAS, with a view to providing for the orderly development of the cooperative movement in the State of Maharashtra in accordance with the relevant directive principles of State policy enunciated in the Constitution of India, it is expedient to consolidate and amend the law relating to

> cooperative societies in that State; ..."
>
> Thus, the Act is intended to consolidate and amend the law relating to cooperative societies and not for the purpose of regulating all the transactions, whether falling within the purview of the common law or the special statute, by the legislation in question."

15. The Coop.Court in the present case cannot be held to be a substitute for a civil court. It is undisputed before me that section 91 of the M.C.S. Act read as a whole contemplates that for the jurisdiction of the Coop.Court to be invoked, the parties to the dispute have to be the one answering the description stipulated thereunder. The very phraseology of sub-section (1) "if both parties thereto are one or the other of the following.." would make the Legislative intent

clear. It is undisputed before me that the first respondent does not answer this description inasmuch as there is no contractual relationship. If sub-clause (c) of section 91(1) is perused it is apparent that the person other than a member of the society with whom the society has any transaction contemplated thereunder would not cover the respondents.

16. Section 49 of the M.C.S. Act contemplates that the members of the society who are employees of an employer can after forming a coop.society and executing individual agreement approach the employer and forward to him copy of such agreement and on receipt of the copy of the agreement, the employer shall, if so required by the society, by request in writing called up on to deduct the sums specified therein and he is obliged to deduct and pay to the society the same in accordance with the agreement, entered into between the society and its members. It is not

as if the petitioner is without any remedy if the employer is deducting something more than what is contemplated and covered by the agreement. If the administrative charges are de hors the agreement between the petitioner society and its employees and the employer cannot make such deduction and has rather violated the terms of the agreement, then, the remedy of the petitioner society is to approach competent civil court and seek a declaration as is sought in the present dispute. The doors of civil court are always open for the petitioner society. Once the Maharashtra State Coop.Appellate Court holds that the dispute read as a whole does not fit in the scheme of section 91(1) then, it goes without saying that the remedy of approaching civil court is always in tact and available. It is undisputed that a coop.court can also in some cases refer some of the contentious issues raised before it to a civil court. That is how section 93(2) is worded. Therefore, there is no

substance in the contention of Mr.Dani that the order of the Coop.Appellate Court leaves the petitioner without any remedy.

17. In my view, all that the Coop.Appellate Court was obliged to consider was whether Coop.Court has jurisdiction to entertain and try the dispute. Having held that the dispute is not covered by the provisions of the Act and not answering the requirements stipulated by section 91(1), then, the finding recorded that Coop.Court will have no jurisdiction cannot be faulted with. Such finding is based upon the reading of the dispute application. It is well settled that jurisdiction of a Court must be decided upon the allegations in the plaint or the dispute in the present case. In such circumstances, the omission, if any, of the Coop.Appellate Court to observe that the petitioner can approach civil court and the dispute must, therefore, be taken there, cannot be said to be such as would require

my interference under Article 227 of the Constitution of India. More so, in the light of the clarification above.

18. In the result, the petition fails. It is accordingly dismissed. However, it is clarified that the petitioner society can approach competent civil court and seek all such reliefs as are permissible in law, including the declarations in the dispute application. The civil court to take cognisance of such a suit if filed, and dispose of the same in accordance with the law uninfluenced by any observations of the coop.court and of this Court. The Civil Court may also consider the application of the petitioner society to give them benefit of section 14(1) of the Limitation Act 1963 and if such an application is made, the same shall also be considered in accordance with law. Petition dismissed. No costs.

19. The dispute application will now be returned by the trial court to the petitioner.

(S.C.Dharmadhikari, J)